IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/03/2003

Coram

The Honourable Mr. Justice A.S. VENKATACHALAMOORTHY
and
The Honourable Mr. Justice M. CHOCKALINGAM

A.S. No.719 of 1988

The Commissioner,
H.R. & C.E. Department,
Madras-34. .. Appellant

-Vs-

Arulmigu Ahobila Madam,
rep. by its Power Agent
Thiru P.V.Srinivasan. .. Respondent

Appeal Suit against the judgment and decree made in O.S. No.4298 of 1976 dated 23.12.1982 on the file of the City Civil Court, Madras.

!For Appellant : Mr.G.Sugumaran,
Spl.Govt.Pleader (HR & CE)

^For Respondent: Mr.B.T.Seshadri

:JUDGMENT

A.S. VENKATACHALAMOORTHY, J.

The defendant in O.S. No.4298 of 1976 on the file of the City Civil Court, Madras is the appellant herein.
2. The case of the plaintiff can be set out in a nutshell as under:-
The plaintiff is the 44th Madathipathi of Sri Ahobila Mutt Sri Vaishnavite Mutt established from ancient times from the time of its founder, Sri Adiwan Satagopa Yatindra Maha Desukan about six centuries ago. It has been from that time conti nction as Sri Vaishnavite Mutt for the spread of Sri Vaishnavism and for religious ministrations to the devotees called the disciples of the Mutt. The heads of the Mutt have all been persons who renounced worldly and family life and entrusted as Madath ipathis of the Mutt. The 44th Madathipathi succeeded on the death of the 43rd Madathipathi on 24.11.1957. The 44th Madathipathi acted following the traditions set up by the previous heads of the Mutt and has been administering the affairs of the

Mutt b oth its religious aspect and in its secular aspect with great sincerity and devotion.
While so, on 20.1.1965, the defendant issued a notice to the plaintiff calling upon him to show cause as to why a scheme should not be framed for the better administration of the Mutt and its specific endowments attached thereto with a provi stitute an Advisory Committee to be in charge of the secular affairs of the Mutt under Section 65 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred as "the Act"). In the said notice, it was mentioned that the Ma dathipathi sold immovable properties owned by the Mutt without obtaining previous sanction of the Commissioner under Section 34 of the Act and that too, for prices lower than the market rates to the persons interested. The notice set out certain instanc es in that regard. In the said notice, it was also mentioned that the funds of the Mutt have been lent to the servants of the Mutt against the investment rules. The plaintiff submitted his explanation and made representation against the framing of a sc heme explaining how the contents of the notice are contrary to truth. By an order dated 11.3.1976, the Commissioner held that a draft scheme will be issued with a provision to have an Advisory Committee consisting of five members selected by the Commiss ioner from the Vadagalai Sri Vaishnavite Sect Sishyas of the Ahobila Mutt of whom two will be the practising Advocates and that the period of office as Advisors will be three years from the date of appointment and the mode of selection by the Commissione r will be provided in the scheme. Aggrieved by the said proceedings of the defendant for framing a scheme, the plaintiff instituted the present suit under Section 70 of the Act for setting aside the said order of the Commissioner.

It is contended that framing of a scheme by the Commissioner under Section 65 of the Act on the facts and circumstances of the present case is without jurisdiction and vitiated by errors of law apparent on the face of the proceedings. Accor plaintiff, there are also no proper materials to sustain the order of the Commissioner in relation to his finding as to the proof of various grounds levelled against the plaintiff for framing of a scheme and assuming without admitting for the purpose of arguments that even if one or some of the grounds are held to be proved, still it did not justify the framing of a scheme.

According to the plaintiff, the Mutt in question was originally exempted under the Act of 1927 and later on, it was cancelled only to the extent of the applicability of Sections 69 and 70 of the Act relating to payment of contribution. In 1 fication came to be issued which cancelled the entire order of exemption. That order was challenged in a suit in C.S.No.681 of 1948 on the file of the High Court of Judicature at Madras. However, the same was dismissed. An appeal was filed as against the said judgment and that being so, the rights and liabilities has to be determined only with reference to the said appellate judgment. The appellate judgment was one passed on compromise and the compromise decree did not accept the validity of the can cellation of the notification granting exemption. A reading of the compromise decree would show that what was agreed in the appeal was only the applicability of the Act relating to payment of contribution and audit fees. In those circumstances, it is t o be mentioned that the earlier

notification exempting the provisions of the Act to the Mutt in question is still in force and the defendant has no jurisdiction to extent the provisions of the Act to the Ahobila Mutt. Thus, the defendant is precluded by estoppel, equitable, legal and promissory, from now enforcing any of the provisions of the Endowments Act including the provisions of Section 65 of the Act relating to the framing of a scheme. Therefore, the entire proceedings initiated by the defendan t for framing of a scheme are invalid and null and void. Even assuming that the defendant had jurisdiction, in the facts and circumstances of the present case, the proceedings initiated to frame a scheme is contrary to law and unsustainable on facts and is therefore liable to be set aside.

The defendant examined only three witnesses of whom C.W-1 was not a member of the staff of the Endowments Department and other two are former Inspectors of the defendant. None of the said witnesses have spoken from personal knowledge with r e charges levelled against the plaintiff. None of the documents were marked as exhibits in the enquiry, but were given only Exhibit numbers in the Department file itself. In fact, the documents were not put to the plaintiff's representative who attende d the hearing. In those circumstances, the entire proceedings are violative of the principles of natural justice and are, therefore, liable to be set aside.

As far as ground No.1 is concerned, the plaintiff has pointed out that the lands were sold at a time when the Land Ceiling Act was passed. The plaintiff wanted to safeguard the property of the Mutt by converting it into cash and investing t n fact, the properties were sold only for a reasonable price and the defendant failed to see that the sales effected were made only in the interest of the Mutt, as those lands which were sold were not yielding good income. That apart, in view of the app lication of the Cultivating Tenants and Public Trust Act, the Mutt was not realising the necessary income or even normal income, after selling those lands, the Mutt invested the sale proceeds in proper securities as fully explained in the proceedings bef ore the Commissioner. In fact, the provisions of the Act do not provide for any consequence of such sale without sanction in so far as the trustee is concerned, except for annulling the transaction.

So far as ground No.2 that the lands were sold for a price lower than the market price is concerned, the authorities have acted on the reports of the Revenue Officials and they are nothing but opinion expressed by those staff of the Departm ct, the Revenue Officials were not subjected to any cross-examination. The properties in fact, were sold for a proper price after due enquiry and for the then prevailing price.

The ground No.4 refers to purchase of property by the Mutt. In fact, that was done in the interest of the Mutt. In what way the purchase is against the interest of the Mutt has not been explained. In so far as ground No.6 is concerned, na nvestments on promissory notes, it has to be pointed out that it did not result in loss to the Mutt. In fact, there is no finding to that effect. So far as ground No.7 is concerned, namely, sale of wet lands in Padur village, the same was done only fo r a proper price and the only complaint is that the sale was effected without obtaining sanction under Section 34 of the Act. Ground No.9 refers that a sum of Rs.1,200/- has not

been accounted for. In fact, the perusal of the village account would show that it has been duly accounted for. It is not as if there was any misapplication or misappropriation of the funds. So far as ground No.10 is concerned, the defendant failed to advert that the agreement had been concluded long before the notification. The sale deeds were executed only pursuant to such agreement, but of course, after the notification. Here again, the Commissioner has not recorded a finding that the sales were detrimental to the interests of the Mutt. Thus, the plaintiff would submi t that none of the charges levelled against him would justify the defendant for framing of a scheme.
So far as the sale of the lands are concerned, the plaintiff was under the impression that the exemption, which was granted from time immemorial and conferred under the Act of 1927, was continuing and so he did not apply for sanction. In fa 34 of the Act does not lay down that it is for the Madathipathi or Trustee to apply for sanction and that being so, it is for the purchaser to protect his interest by applying for necessary sanction. Even when such permission is sought for, the Depar tment takes its own time which runs to several years. Hence, action had to be taken whenever a good offer is received and none of these transactions have been made against the interests of the Mutt or the Mutt had lost any property or money under these transactions. While preserving the properties which are yielding good income, such properties, which are not yielding any income or yielding low income had to be sold for a good price and the monies were invested in either profitable investment or pr operty. To say that permission must be obtained even to lend monies to temple servants will work injustice to those sincere staff, since the temple servants are poorly paid and in urgent necessities they could not go to any other person excepting the he ad of the Mutt for immediate relief. If again sanction is to be obtained for lending monies to the servants of the Mutt, it will not be available to the persons in distress and considering the position of the Mutt, the plaintiff had to relieve the tempo rary financial difficulties of the temple servants.

The plaintiff pleaded in the plaint that none of the charges levelled against him have been proved and that there has been certainly no mismanagement of the properties of the Mutt and there are absolutely no evidence, whatsoever, to justify sioner's decision that a scheme should be framed. The plaintiff sought for a decree cancelling the order of the defendant dated 11.3.1976 in O.A.No.3 of 1973.

3. The defendant filed a written statement denying various claims made by the plaintiff. According to the defendant, the suit is premature and that the plaintiff has no cause of action to maintain the present claim. The defendant would ple exemption which was originally granted to the plaintiff was withdrawn in the year 1947. Questioning the same, the plaintiff filed a suit in C.S.No.681 of 1948 which was partly decreed and withdrawal of exemption was upheld. Questioning the correctness of the same, the plaintiff and the defendant filed appeals in O.S.A. Nos.114 of 1953 and 142 of 1953. Those appeals were compromised between the parties. The said compromise only related to levy and demand of contribution and audit fee. The said comp romise was however silent as to the exercise of other powers under the Act. This could only mean that the jurisdiction and power of the

Government and the Department in other respects are fully admitted by the plaintiff herein.

According to the defendant, it received complaints regarding mismanagement by the Madathipathi that he sold immovable properties belonging to the Mutt resulting in heavy loss to the institution. Such sales were effected without obtaining pr n as contemplated under Section 34 of the Act. The Commissioner desired framing of a scheme under Section 65 of the Act to ensure proper and effective management of the Mutt's properties and in the notice issued to the plaintiff in O.A.No.3 of 1973, a d raft scheme was proposed to be framed. The said notice gave complete details and the grounds on which a scheme was found necessary. For that purpose, an enquiry was posted to 21.5.1976. In the mean time, the plaintiff hurriedly rushed to the Court and filed the above suit. No suit would lie under Section 70(1) of the Act 22 of 1959 against the proposed draft scheme unless and until the Commissioner passed a final order after considering the objection, if any, filed by the aggrieved party. According to the defendant, the suit is premature. That apart, the suit itself ought to have been filed in the Court having jurisdiction in Chengleput or North Arcot District as per the provisions of the Act and that being so, the suit is incompetent.

The Commissioner, only after examining the entire matter and only on the basis of the evidence available, came to the conclusion that a scheme should be framed and for which purpose, before passing an order desired to know the suggestion of well as other persons interested. The fact that a draft scheme was framed by the Commissioner when the exemption of the Mutt from the provisions of the Act continued and even during the pendency of the suit as well as Original Side Appeal was denied. The proceedings for framing of the scheme are legal and valid and were initiated strictly adhering to law and the same are warranted on the facts and circumstances and no principle of natural justice is violated. In fact, the charges levelled against th e plaintiff are borne out by records and on the basis of the materials, an adverse inference can be drawn. The plaintiff was also given adequate opportunity at the enquiry and he could have cross-examined the witnesses. Exhibits were marked only in the presence of the plaintiff's agent and counsel. If a trustee violates any statutory provision, it is open to the authority functioning under the statute to initiate such action against the delinquent trustee as is called for. As the violation has been persistent in the case of the plaintiff, the Department initiated the present proceedings to frame a scheme.

The opinion of the revenue officials cannot be termed as private opinion and the plaintiff could have adduced evidence disproving the same. In some instances, the sales were effected to some relatives of the plaintiff and the same have not . The examination of the materials reveals that the action of the plaintiff is high handed and in flagrant violation of the statutory provisions. The charge is that instead of cash consideration, promissory notes have been taken. The plaintiff thus ad mits the charge. This conduct of the plaintiff is highly irregular and objectionable. The contention that it was only for the purchaser to obtain the sanction under Section 34 cannot be sustained. The plaintiff himself has applied for

sanction under S ection 34 in the case of other Mutt properties. Even assuming there used to be some delay in granting sanction, that cannot be a ground for the plaintiff to act on his own and effect sales of the Mutt properties without obtaining necessary sanction. As a trustee, the Madathipathi is bound to act according to law.

4. The plaintiff filed a reply statement contending that the order of the Commissioner was made under Section 65 of the Act and virtually, it is a final order. Further the decision of the Court is required in observing the rules of natural ted under Rule 5(b) of the Rules framed under Section 65 of the Act which requires the Commissioner, after considering the objection/suggestion, if any received by him, has reason to believe that a scheme should be settled, modified or cancelled, he shal l give notice to the Trustee about his intention to settle, modify or cancel a scheme of administration of the Mutt. Without giving such a notice, the Commissioner had come to a decision to settle a scheme and the notice issued by him, which is the subj ect matter of the suit, is only about the proposed terms of the scheme and not for inviting objection or suggestion for his decision of settling the scheme itself. The plaintiff denied the allegation that all the exhibits were marked in the Court and th at too, in the presence of plaintiff's agent. All the so called exhibits are said to be in a file and they were not even shown to the counsel for the plaintiff for perusal and no identification of proving or cross examination of witnesses in regard to e xhibits were done. Neither revenue reports were filed nor any witnesses were examined on them and no list of witnesses were given to the plaintiff for rebutting such evidence and it is preposterous to suggest that the plaintiff ought to have examined wi tnesses to rebut the same allegations not proved by the Department.

5. At the time of trial, on behalf of the plaintiff, four witnesses were examined and Exs.A-1 to A-13 were marked. On the defendant's side, one witness by name Rajagopalan was examined and documents Exs.B-1 to B-34 were filed. The learned framed as many as 10 issues for consideration. The trial Court after elaborately considering oral and documentary evidence held that (1) the exemption originally granted was validly withdrawn and the compromise entered in O.S.A.Nos.114 of 1953 and 142 of 1953 was only with reference to the contribution to be made by the plaintiff; (2) the contention of the appellant that the sanction for alienating the property or other properties referred to therein is one to be obtained by the vendor/executor and no t by other party and in this case that was not obtained; (3) the respondent/defendant has not proved that the plaintiff sold the property for a lesser price and that no evidence has been let in to show that the Mutt was not properly administered; and (4) the Commissioner while invoking Section 65 of the Act has not followed the procedures.

6. The learned counsel appearing for the appellant made the following submissions:-

The suit filed by the plaintiff is premature inasmuch as no final scheme has been passed and in those circumstances, the suit itself is not maintainable. Even assuming that by the Madathipathi alienating the

properties, the Mutt has not suf oss, such alienations are violative of Section 34 of the Act. Management, if not in conformity with the law, has to be only characterised as mismanagement, which would warrant the Commissioner to invoke Section 65 of the Act and for framing of a scheme. The fact that the Madathipathi subsequent to the alienations has done yeoman service to the Mutt cannot be a factor to condone the violations of Section 34 of the Act by the plaintiff.

7. We deem it necessary to quote certain provisions under the Act and Rules for the purpose of examining the case of the respective parties. Section 65 of the Act reads as under:-

"65. power of Commissioner to settle schemes.--

(1) when the commissioner has reason to believe that in the interests of the proper administration of a math or a specific endowment attached to a math, or when not less than five persons having interest make an application in writing statin he interests of the proper administration of the math, or the specific endowment attached to the math, a scheme should be settled for it, the Commissioner shall consult in the prescribed manner the trustee and the persons having interest; and if, after s uch consultation, he is satisfied that it is necessary or desirable to do so, he shall by order, settle a scheme of administration for the math or the specific endowment attached to the math.

(2) a scheme settled under this section for the administration

of math or a specified endowment attached to a math may contain provision for--

(a) ... ..."

Certain Rules have been framed which are called "Framing of Schemes". (G.O.No.4851, Revenue, dated 26.11.1960). Rule 5 (a) and (b) of the said Rules read as under:-

"The consultation required sub-sections (1), 4(a) of section 65 shall be made in the following manner:-

(a) When the Commissioner proposes on his own motion to take action under sub-section (1) or 4(a) or (b) of section 65 or where an application under sub-section (1) is received by him, he shall give notice of his proposal or of the applicati case may be, to the trustee or the trustees and the persons having interest calling upon them to submit any representations they may wish to make before a date to be specified in such notice which shall not be less than two months from the date of its is sue.

(b) If, after considering the objections or suggestions, if any, received by him, he has reason to believe that a scheme should be settled, modified or cancelled, he shall give notice to the trustee or the trustees and the persons having int is intention to settle, modify or cancel a scheme of administration for the math or a specific endowment attached to a math and call upon them to submit in writing any objections or suggestions they may wish to make before the date specified in such noti ce for an enquiry."

Rule 7 of the said Rules reads as under:-

"Every order of the commissioner settling modifying or cancelling a scheme under section 65(5) shall be published as follows:-
(i) by affixture on the--
(a) notice board or front door of the math concerned and in the case of a specific endowment attached to a math on the notice board or front door of the math to which the specific endowment is attached;
(b) notice board of the office of the Municipal Council including the Corporation of Madras or village chavadi concerned;
(c) notice boards of the office of the Assistant Commissioner and the Deputy Commissioner concerned; and
(d) by publication in the FORT ST. GEORGE GAZETTE."
(Emphasis supplied)

Section 70 of the Act deals with filing of suits and appeals which reads as under:-

"70. Suits and appeals.-- (1) Any party aggrieved by an order passed by the Commissioner
(i) under sub-section (1) or sub-section (2) of the section 69 and relating to any of the matters specified in section 63, section 64 or section 67; or
(ii) under section 63, section 64 or section 67 read with sub-section (1)(a), sub-section (1)(a), (2) or sub-section 4(a) of section 22 or under section 65; may, within ninety days from the date of the receipt of such order by him, institute the court against such order, and the Court may modify or cancel such order, but it shall have no power to stay the order of the Commissioner pending the disposal of the suit.
(2) ... ..."

Section 108 of the Act is to the effect that no suit or other legal proceedings in respect of the administration or management of a religious institution can be filed if a provision has been made in the Act itself.

8. The above provisions lay down the following:-
(1) The Commissioner can invoke Section 65 of the Act suo-motu or on an application in writing, made by the required number of persons.
(2) The Commissioner shall, before deciding to frame a scheme, consult the Trustee and the persons having interest. Notice shall be sent to those persons by registered post calling upon them to submit their representation before a date to b in that notice.
(3) The Commissioner is to consider the objection/suggestion and may drop his proposal to frame a scheme, but, however if he desires to frame a scheme, he shall give notice to the Trustee and the persons having interest of his intention to s eme for the administration of the Mutt and call upon them to submit in writing any objection or suggestion before a specified date.
(4) The Commissioner, keeping in mind their objection or suggestion submitted by those persons, shall frame the scheme of

administration. Thereafter, the scheme shall be published in the gazette.

9. Let us now proceed to consider as to what happened in the case on hand. The defendant/Commissioner received complaints of mismanagement of Mutt properties, in the sense that immovable properties belonging to the Mutt were being sold wit ing necessary sanction as contemplated under Section 34 of the Act. The Commissioner issued a show cause notice dated 18.8.1964 to the plaintiff calling for an explanation. The notice, though is dated 18.8.1964, was signed by the Commissioner on 3.9.19 64 and the same was served on the Madathipathi on 7.9.1964. The reply sent by the plaintiff is dated 1.10.1964. An enquiry was conducted only in the year 1975, that is to say, after a decade. The proceedings of the enquiry were annexed to the notice d ated 11.3.1976 intimating enquiry date. In fact, in the said proceedings, in the very first page after the opening paragraph, it is mentioned as under,

"Annexure to Order dated 11.3.1976"

The last paragraph of the said proceedings mentions that a draft scheme will issue with a provision to have an advisory committee consisting of five members selected by the Commissioner from the Vadagalai Srivaishnavite sect and the Sishyas of the Ahobil a Mutt, of whom two will be practising advocates and that the period of office as advisers will be three years from the date of appointment.

10. The Commissioner sent a notice dated 11.3.1976 (along with a copy of the enquiry proceedings referred already) and in paragraph 3 it is mentioned that the Commissioner held an enquiry into the various acts of mismanagement, etc., and has o settle a scheme of administration in exercise of his powers vested in him under Section 65 of the Act. The notice further mentions that an enquiry will be held at 2.00 p.m. on 21.5.1976 and the Madathipathi and the persons having interest can appear a nd place their objections/suggestions, if any. The notice also contains a draft scheme (containing 22 clauses).

11. First let us proceed to consider the contention of the appellant whether the suit is premature since the plaintiff was issued with only a notice inviting him for an enquiry and no order under Section 65 of the Act was passed and the noti only a draft scheme and not a final scheme. The notice dated 11.3.1976 intimating the date of enquiry and draft scheme was sent with the annexure viz., the enquiry report.

The enquiry report (proceedings) does not carry any date. It appears that enquiry was conducted only in the year 1975 i.e, after a decade, after receiving the explanation of the plaintiff to the show cause notice. The first page of the enq mentions as under,
"Suo motu proceedings under Section 65 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) for the settlement of a Scheme for the Administration of the above said Mutt. Annexure to Order dated: 11.3.197
(Emphasis supplied)

The last paragraph of the said proceedings mentions that a draft scheme will issue with a provision to have an advisory Committee and also setting out the details with regard to constitution of such Committee and other details. The notice, after fixing the time and date of enquiry, gives details with regard to the draft scheme (draft scheme sets out 22 clauses). The copy of the draft scheme was sent to various authorities including Government Press. To quote the exact wordings, we find,

"Copy to Director of Stationary and Printing, Madras-1 for publication in the Government Gazette".

It is not known why the Commissioner desired to publish the draft scheme in the Gazette. The Act and Rules do not contemplate the Commissioner preparing a draft scheme and then a final scheme. All the above would clearly show that the Commissioner had prejudged the issue viz., that he even at the time of conclusion of the enquiry, decided to frame the scheme. Though the word notice is mentioned, in his communication dated 11.3.1976, purporting to intimate the Madathipathi and others about the enquiry to be held on 21.5.1976, the said communication was in effect only an order passed by him. This is the only conclusion this Court can arrive at in the peculiar circumstances of the case. Once this Court comes to such a conclusion that the communicatio n dated 11.3.1976 is only an order under Section 65 of the Act, then a suit would lie under Section 70 of the Act. It is futile on the part of the respondent/defendant to contend that he did not pass any order under Section 65 of the Act and that the su it is premature.

12. The next question is whether the Commissioner had followed the procedure contemplated under the Act and Rules. We have already set out the relevant provisions in the Act as well as in the Rules. The first violation by the Commissioner had failed to give notice to the Madathipathi and others having interest, calling upon them to send their suggestions/objections, if any, before a particular date for his proposal to form a scheme as contemplated under Rule 5(a). The Commissioner canno t be heard to say that his giving show cause notice to the Madathipathi and considering his explanation would satisfy the requirements under Rule 5(a). As per the Rule, once the Commissioner is satisfied that a scheme has to be framed, then he has to gi ve another notice under Rule 5(b) calling for objections/suggestions before a given date from the Madathipathi and the persons interested, even before drafting a scheme. But in this case, he had sent the draft scheme itself along with the notice. The A ct or Rules do not contemplate the Commissioner framing a draft scheme and then a final scheme. Further, Rule 5(b) is only to the effect that he has to call for objections/suggestions from the Madathipathi and other persons interested which they could s end on or before the date to be specified by him before a scheme is framed. The provisions do not contemplate the Commissioner conducting an enquiry as mentioned in the impugned notice. All that Rule 65(7) lays down is that every order of the Commissio ner settling a scheme under Section 65(5) shall be published in the Gazette. But in this case, curiously the Commissioner had sent the copy of the draft scheme for publication in the Government Gazette.
At this juncture, it is relevant to point out the ruling of

the Division Bench of this Court reported in 1976 Law Weekly 599 (Navaneetham v. Commissioner, H.R. & C.E., Madras), wherein the Division Bench has held as under,

"It stands to reason, therefore, that the persons entrusted with authority to frame a scheme should have due regard to the wishes of the founder and the interests of the institution before they introduce third parties into the management. .. .. The words in the statute which require it are not intended to be a mere formula to be adopted for every case, regardless of the facts and circumstances, but a real requirement on which the authority concerned has to be fairly satisfied. The satisfaction in that regard will be more or less in the nature of a quasi-judicial one."

The above facts and circumstances would show beyond any doubt that the Commissioner had not followed the procedure laid down under the Act and Rules while taking action under Section 65 of the Act.

13. For the above reasons, we come to the conclusion that the order dated 11.3.1976, though purported to be a notice issued, is liable to be cancelled on the ground that the entire procedure followed by the Commissioner

which ultimately culm he issue of such order/notice is contrary to the provisions of the Act and Rules. Consequently, we quash/cancel the said notice.

14. The next question is as to what should follow. Is it that the Commissioner has to take proceedings afresh in conformity with the Act and Rules? Section 65 of the Act is to the effect that the Commissioner can act suo-motu or on an appl writing made by five or more persons bringing to the notice of the Commissioner about the improper administration of the Mutt. It does not speak of any limitation.

15. Even assuming that at this distance of time, the Commissioner can take proceedings afresh under Section 65 of the Act, the question is Whether the same would be just, proper and reasonable, has to be considered.

16. Admittedly the sales were effected between 1960 and 1962 by the 44th Madathipathi without obtaining sanction under Section 34 of the Act. The Commissioner issued a show cause notice dated 18.8.1964 to the plaintiff calling upon him to e o why a scheme should not be settled for the better administration. This notice was received by the plaintiff-Madathipathi on 7.9.1964 and the Madathipathi sent his reply on 1.10.1964. There was a lull for more than a decade. An enquiry was conducted and in which three witnesses were examined, out of whom two were the departmental staff. It is not clear from the record as to when those witnesses were examined. In the enquiry report it is found O.A. number is given and that is of the year 1973. We have to only proceed on the basis in the absence of any other material available on record, that even after receiving the explanation to the show cause notice in 1964, nothing happened for more than 8 years. If that is so, why the matter was kept in c old storage for such a long time is not known. Whatever it is, thereafter, the Matadhipathi took the onerous task of constructing the Raja Gopuram at Sri Rangam. On the appeal made by the Madathipathi, huge donations from the public were received which exceeded more

than a crore. A Renovation Committee was formed and in which the Assistant Commissioner was the Secretary. The renovation work was successfully completed and the religious ceremonies as per the religious custom were also performed. This would show that the public had abundant faith in the Madathipathi and even the Department actively participated in the renovation work. This would also give a reasonable and clear impression that the Department later on abandoned its idea of proceeding further in the matter, namely, to frame a scheme. It is not the case of the department that subsequent to 1962 there have been similar or other violations of the provisions of the Act. The 44th Madathipathi, whose alienations are being questioned, as cended the 'Peedam' in 1957, continued so till 22.10.1991 and somewhere in October 1992 he breathed his last. Even during his life time, he nominated the present Madathipathi as his successor and he has been so functioning since 22.10.1991 and there ar e no complaints against the present 45th Madathipathi. Moreover, the learned counsel for the respondent/plaintiff submitted that the 45th Madathipathi would file an affidavit before this Court within three weeks, making it clear that he will abide by t he provisions of the Act and Rules. In view of the above subsequent developments this Court is of the considered view that it should be made clear that the defendant-Commissioner shall not at this distance of time take proceedings afresh under Section 6 5 of the Act concerning the sales effected by the late 44th Madathipathi between 1960 and 1962 violating Section 34 of the Act.

17. The legal position that the Court can, while examining the matter, take note of the subsequent events is well settled and suffice to point out certain rulings, namely, (1) P. PURUSHOTTAM REDDY v. PRATAP STEELS LTD (2002 (2) S.C.C. 686); EN KANTILAL BHATT v. RASHIKLAL MANILAL SHAH (AIR 1997 S.C. 2510); and (3) PATTERSON v. ALABAMA (1934 (294) US 600).

18. In the result, the appeal stands dismissed. No costs.

Index: Yes
Website: Yes

vr

To
1. The Registrar, City Civil Court, Madras.
2. The Record Keeper, V.R.Section, High Court, Madras.